



WISCONSIN REGULATORY DIGEST

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Volume 10, No. 2 OPTOMETRY EXAMINING BOARD DECEMBER, 1998

Governor Tommy Thompson Appoints New Board Member

The Optometry Board would like to introduce its newest member, Dr. Heather M. Hinson. Dr. Hinson was appointed to the Board August 13, and will serve an interim term until July 1, 1999. Dr. Hinson enjoys practicing primary care optometry in the Milwaukee area. She sub-specializes in low vision. Dr. Hinson is a native of the Milwaukee area, she went to Marquette University, and UW-Milwaukee. She graduated from the Illinois College of Optometry in 1988.

When Heather isn't practicing optometry, she enjoys being with her family. Her husband Doug, and three sons; Nathaniel, Benjamin, and Jeremiah reside in Greenfield, WI. The family enjoys going to the zoo, library and participating in church activities. Heather and Doug are curious to see if any of the children will follow their footsteps into optometry. Optometry has been very good to their family. There have been 15 optometrists in the extended Hinson family either by blood or marriage.

OPTOMETRY EXAMINING BOARD

Members of the Board:

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Heather M. Hinson, O.D., (Greenfield)

Administrative Staff:

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Marlene A. Cummings, Secretary
Patricia McCormack, Deputy Secretary
Myra Shelton, Executive Assistant

Legislative Update

Optometrists May Direct Nurses

1997 Wisconsin Act 62, effective March 18, 1998, allows optometrists, along with persons licensed to practice medicine, podiatry or dentistry, to direct registered and practical nurses.

1997 Wisconsin Act 62 provides that registered nurses and licensed practical nurses may accept orders from optometrists *licensed in Wisconsin as of March 18, 1998*. Nurses may accept orders from optometrists who are *licensed in another state* and who prepare orders after examining a patient in another state **as of May 1, 2000**.

The act may be found on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Access to Health Care Records

Wisconsin statute 146.83 concerning access to health care records has been amended by 1997 Wis. Act 157 to require that health care providers release records directly to a patient's health care provider upon request and with a statement of informed consent. The Act also prohibits concealing or withholding health care records from a patient's health care provider or to prevent or obstruct an investigation or prosecution. Violations of the statute still include actual damages and exemplary damages along with injunctive relief.

This law was effective in April 1998. Copies of the amendment are available from the department or via internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Tax Delinquency, A New Basis for Denial, Suspension And Revocation

Since 1996, the law has required the department to verify that applicants for credential renewal are not

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delinquent in payment of Wisconsin state taxes. The department is required to deny renewal if the Department of Revenue certifies that an applicant is tax delinquent.

Effective January 1, 1999, the scope of the law will expand to apply to other state agencies, including the Department of Transportation and the Department of Natural Resources. The law will also change to include applicants for new licenses and current credential holders. After January 1, 1999, the Department of Regulation and Licensing is required to deny an application for an initial credential if the applicant is certified by the Department of Revenue as being liable for delinquent state taxes. The Department will also be required to revoke the credential of current holders who are tax delinquent.

A person denied or revoked because of a tax delinquency status may request the Department of Revenue to review the certificate of tax delinquency at a hearing.

1997 Wisconsin Act 237 at section 307 and sections 532 - 551 is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Law Sanctions Professionals With Delinquent Support and Collects Social Security Numbers

In April 1998, legislation was enacted which provides for suspension of credentials for failure to pay support or for failure to comply with a subpoena or warrant related to paternity or support proceedings. The determination of failure to pay support or failure to comply with a warrant or subpoena will be made by county support agencies or the Department of Workforce Development.

The Department of Workforce Development, after proper notice and provision for hearing, will certify to the Department of Regulation and Licensing that a professional who holds a credential issued by the department, or who is applying for a credential is delinquent in support or has failed to comply with a subpoena or warrant. The department then shall restrict, limit or suspend a credential or deny an application for an initial credential or for renewal of a credential. The credentials will remain restricted, limited or suspended until the department receives notification of release from the Department of Workforce Development. However, credentials shall not be sanctioned for more than five years if instituted because of delinquency in support, or for more than six months if instituted for failure to comply with a subpoena or warrant. This act became effective in April 1998.

The new Family Support Collection Act requires the Department of Regulation and Licensing to collect

social security numbers from all individuals who apply for new credentials. Applications from individuals who do not submit their social security number will be denied. The social security numbers collected may be disclosed only to the Department of Workforce Development for the purpose of enforcing the Family Support Collection Act, or to the Department of Revenue for the purpose of checking for tax delinquencies.

1997 Wisconsin Act 191 is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Administrative Warnings May be Issued Under New Law

Examining boards, the department and other regulatory authorities are authorized to issue administrative warnings under a new law effective May 5, 1998. An administrative warning may be issued to close an investigation if a regulatory authority determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the warning adequately protects the public.

Under the law, an administrative warning puts the professional on notice that if the misconduct is repeated, the incident that was the basis for the warning can be used to prove that the person warned knew the conduct was prohibited. A warning is not discipline and may be issued without a formal complaint or a hearing.

A credential holder may have a warning reviewed before the department or board that issued the warning. The Act requires the department to promulgate rules establishing uniform procedures for administrative warnings. 1997 Wisconsin Act 139 is available from the department and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Revisions to Administrative Rules

The Optometry Examining Board recently amended several provisions contained in chs. Opt 3 and 4, relating to examination requirements for initial and reciprocal credential applicants.

In the past, individuals applying for a license to practice optometry were required to pass Parts I, II and certain components of Part III of the examination administered by the National Board of Examiners in Optometry. Similar requirements were contained in the rules relating to reciprocal applicants. Until recently, applicants were also required to pass a practical examination administered by the Board, because the Board did not accept the results of the practical component of Part III of the national examination. As a result, applicants were required to pass two practical examinations, the practical component of Part III and the practical examination given by the Board. After further review, the Board determined that the practical component of Part III is

equivalent to its practical examination. Thereafter, the Board discontinued its practical examination and elected to accept the practical component of Part III instead. The amendments to chs. Opt 3 and 4, reflect this change.

Complaints Against Credential Holders

Complaints are processed in the following manner:

All complaints received by the Optometry Examining Board and the Department are routed to the Division of Enforcement (DOE) where they are logged into the computer and given a number.

Complaints are screened by several board members and the supervisor of the DOE prosecutors and the supervisor of the DOE investigators. The complaint screening process results in a decision to open or not open a complaint for investigation. Sometimes additional information is requested of the complainant at this stage of the process. Most boards are now moving toward screening complaints at least once a month.

If a complaint is opened for investigation, it is assigned to a team in DOE. Teams consist of prosecutors, investigators, legal assistants and, in some cases, auditors. A specific prosecutor and investigator is assigned to the case and the investigator commences an investigation as soon as possible. The investigation generally includes corresponding with the complainant, the credential holder and other people with relevant information. Documents are reviewed and the investigator often interviews people to obtain more information.

A board member is assigned to the case as an advisor. The board member offers suggestions to the investigator and, after the investigation is concluded, the advisor recommends that the case be closed for a certain specified reason or that the case proceed to possible disciplinary action.

If the case advisor recommends possible disciplinary action, a prosecutor reviews the file and requests additional investigation, if needed. The prosecutor usually offers the licensee an opportunity to agree to a resolution of the matter. The offer may be in the form of a written stipulation for some type of discipline, such as a revocation, suspension, limitation, reprimand, and/or an assessment of all or part of the costs of the investigation and prosecution. If the credential holder rejects the stipulation, the attorney schedules a hearing before an administrative law judge. The hearing is like a trial and the credential holder may have an attorney represent him or her.

After the hearing, the administrative law judge prepares a proposed decision and refers it to the Board.

If a case advisor recommends that a case be closed, the case is reviewed by the Board at its next meeting and the Board either concurs or refers the case for disciplinary action. Stipulations and proposed

decisions are also referred to the Board for final disciplinary action.

If the Board disagrees with a proposed stipulation, the Board may refer the case back to the prosecutor for more negotiations or, possibly, a hearing. If the Board disagrees with a proposed decision of an administrative law judge, it may change parts of the proposed decision, but it will have to explain why it is making the change.

There is considerable due process built into the complaint process. Credential holders or their attorneys are given many opportunities to respond to proposals and to object to decisions. Ultimately, if a credential holder disagrees with the Board's disciplinary decision, the credential holder may appeal the case to the Court of Review.

Letters are sent to complainants and credential holders at various stages in the process, informing them of receipt of a complaint and the final disposition of a complaint.

Disciplinary Actions

STUART W. NATALE
GRAFTON WI

REPRIMAND

Filed an application for an optometrist license indicating he had no disciplinary action taken against his Illinois license. In fact, he had been reprimanded in Illinois. Ordered to pay costs of \$200. Effective 6/19/98.

The Role of Public Members of Licensure Boards By Lorayne Ritt

Public members have served on licensure boards attached to the Department of Regulation and Licensing since 1975. In 1983, Wisconsin Act 403 increased the number of public members on licensure boards to two. Public board members are initially inexperienced in the profession being regulated and not connected to the regulated profession or licensed by the board on which they serve.

Public members represent the consumer perspective. Contributing to board decisions with the consumer's interest in mind provides balance to a board to prevent bias toward the profession being regulated.

Consumer protection is the basis of regulation. The public member must always be aware of the consumer advocacy role which is theirs. Technical expertise is provided by the professional members while public members provide consumer perspective. Together they balance consumer interest with safe, competent service.

The public member tries to work toward mutual respect and good working relations with other board members. It is also incumbent on the public member to make other board members aware of the concerns of the people we represent.

Department of Regulation and Licensing
Optometry Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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Automated Phone System for Chiropractic, Acupuncture, Massage Therapists/BodyWorkers, Music, Art & Dance Therapists, Marriage & Family Therapists, Nursing, Optometry, Professional Counselors, Psychology, & Social Workers: (608) 266-0145

Press 1, then 4 **Application Requests for License & Continuing Education**

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FAX: (608) 261-7083

Quick Keys

The following voice mail “**short cuts**” could be sent out with renewal notices and/or otherwise published:

To request a license application for your profession, just dial (608) 266-0145, then enter the Quick Keys number below for the profession you want:

Regular Optometry 1-5-1

TPA/DPA 1-5-2

1999 Meeting Dates

January 22, March 19, May 7, June 18, July 23, August 27, October 15, December 3.

Verifications

All requests for verification of license status must be in writing. There is no charge for this service.

Endorsements

Requests for endorsements to other states must be in writing. The cost is \$10. Please make check or money order payable to the Department of Regulation and Licensing.

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>

Send comments to dorl@mail.state.wi.us

Wisconsin Statutes and Code

Copies of the Optometry Statutes and Administrative Code can be ordered through the Board Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated December, 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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